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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

YON PYO HONG,

Plaintiff and Respondent,

v.

WORLD CHRISTIAN THEOLOGICAL
UNIVERSITY et al.,

Defendants and Appellants.

B241482

(Los Angeles County
Super. Ct. No. BC390377)

APPEAL from a judgment of the Superior Court of Los Angeles County, Rex
Heeseman, Judge. Affirmed.

Marh & Associates, David Marh and Simon H. Langer for Defendants and
Appellants.

Henry M. Lee and Michelle P. Tran for Plaintiff and Respondent.

Defendants World Christian Theological University (World Christian) and Moses Joon Suk Lee (Moses Lee) appeal judgment after a jury awarded plaintiff Yong Pyo Hong (Hong) compensatory and punitive damages in Hong's action arising from his employment at World Christian. Hong, who holds a doctorate in theology, moved his library of in excess of 15,000 theological volumes to World Christian's library at the invitation of World Christian's president, Moses Lee. Hong asserted his books were needed by World Christian to obtain accreditation that would permit World Christian to issue student visas. Shortly after Hong moved his library to World Christian, World Christian terminated his employment and refused to return his books. When Hong went to the campus and attempted to retrieve his books, he was hit by Moses Lee in the mouth and lost several teeth.

After a jury trial, the jury returned a verdict in favor of Hong against defendants on claims for battery, fraud, and conversion, awarding compensatory and punitive damages. World Christian and Moses Lee assert (1) insufficient evidence supports the jury's finding of battery, (2) the trial court erred in failing to grant a continuance to permit defendants to secure the attendance of two witnesses on the issue of whether a battery occurred, and (3) the punitive damage award was excessive. Hong has moved for sanctions on the ground that defendants' appeal is frivolous. We affirm, and deny the motion for sanctions.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

After an unsuccessful attempt to mediate this matter, on May 7, 2008, Hong filed his complaint against World Christian, Moses Lee, Korean Christian Church, and Young Soo Lee (Young Lee)¹ based on the termination of his employment with World Christian, World Christian's refusal to return his books, and Moses Lee's attack on Hong.² The matter went to trial on Hong's claims for conversion, battery, and fraud.

¹ The record does not indicate whether Moses Lee and Young Lee are related.

² Defendants Korean Christian Church and Young Lee are not parties to this appeal.

Trial commenced on February 1, 2012. The parties presented the following evidence:

1. The Parties

Moses Lee is the senior pastor of the Korean Christian Church, a position he has held since 1997. Since 1999, Moses Lee has also been the president of and a member of the board of directors of World Christian, a theological school. Moses Lee has a master's degree, an M.D., and a Ph.D., and teaches church service and prayer at World Christian. World Christian is approved by the State of California, and awards numerous degrees in theology, including bachelor's and master's degrees, as well as doctorates in theology and Christian counseling. Moses Lee's wife and his daughter and son assist with the administration of the school.

Hong received his Ph.D. from Fuller Theological Seminary, and has another Ph.D. from Bible Theological Seminary. Hong has taught for 22 years, and has published about 75 books. Hong received some of his education in Korea, and has also published books in Korea. In 2005, he was employed at United States Bible Church. While in Korea, Hong accumulated a library of personal books, and brought the books to the United States.

2. Hong's Employment at World Christian

In 2005, World Christian was in the process of obtaining paperwork that would permit it to issue student visas to foreign students (known as Sevis Accreditation). Before becoming accredited, World Christian had no foreign students; after receiving accreditation in 2007, it had 30 to 40 foreign students on average out of a total of 190 students. Hong, who has been a vice-president of a school, obtained Sevis accreditation for Bethesda Christian University in Fullerton. Sevis accreditation required a school to have a library.

Moses Lee claimed that in order to obtain accreditation, World Christian only needed three other accredited schools to vouch for World Christian. However, according to Hong, World Christian was looking for someone to help it with the accreditation

process, and hired Hong to do so. In December 2005, World Christian had placed an advertisement and Hong called in response. Moses Lee and Hong met at a Denny's. Moses Lee thought Hong was strange, unstable, and exaggerated his background. Hong's resume was long and in Moses Lee's view, disorganized.

They had a lengthy conversation, during which (according to Hong) they discussed Hong's employment at World Christian as vice-chancellor and head of the graduate school. After the meeting, Moses Lee and Hong agreed to meet again at the Denny's. In January 2006, the two met again. Hong brought a student, Young Song Lim, with him. Hong wanted Lim to transfer to World Christian in order to get an F-1 visa. However, Moses Lee confessed that World Christian could not issue an F-1 visa. Lee offered Hong the position of vice-chancellor at \$3,000 per month; part of Hong's duties would be to obtain accreditation for World Christian. The employment term was to be five years, and at the end of this term, Hong could obtain the return of his books or World Christian would pay for them.

3. *Hong Brings His Books to World Christian*

Before his start date of February 1, 2006, Hong moved his books to World Christian. Hong estimated he had approximately 15,000 books. On his first day at World Christian, Moses Lee introduced Hong to others at the school as the dean of education. Moses Lee told Hong that accreditation inspection would take place on February 15, 2006 and the library needed to be ready by that date. Moses Lee never objected to Hong's books being brought to World Christian, and Hong would not have brought his books to the school if Lee had not offered him employment.

Dr. David Bundy was the librarian at Fuller Theological Seminary from 2002 until shortly before trial. He valued Hong's book collection at from between \$300,000 to \$800,000. It took Hong over 20 years to accumulate the books. He used the books to obtain his doctorate, to write his dissertation, and to write other books.

4. *Hong Assists in World Christian's Accreditation*

Hong worked with Fannie Washington, Dean of Student of Affairs at World Christian, on the school's Sevis accreditation. Washington gave Hong a document detailing how to prepare for a visit from Homeland Security. Hong also assisted in attempting to obtain accreditation for World Christian from the Transworld Accrediting Commission. Hong submitted an application, signed by Moses Lee, to Transworld Accrediting Commission on behalf of World Christian.

Moses Lee, however, denied that Hong's books were used in any way to obtain accreditation. Moses Lee did not want to hire Hong, and denied that he promised to hire Hong if Hong donated his books to World Christian. Instead, according to Moses Lee, Hong came on his own volition to see the World Christian facilities, and Hong told Moses Lee he was going to dispose of his books, and he would donate them to World Christian's library. Moses Lee told Hong he did not want the books, but Hong insisted. According to Moses Lee, Hong wanted to be vice-chancellor of World Christian. Moses Lee denied signing an employment agreement with Hong.

Moses Lee claimed he did not want the books because World Christian's campus is a house that is used as a church. Members are free to donate books, but the church throws some of them away because the books are heavy and weigh on the school's foundation. Moses Lee was upset that Hong had brought all his books to the school's campus, and did not believe the books would benefit the school. After Hong's employment was terminated, Moses Lee thought the books belonged to the school and he could do whatever he wanted with them, and denied telling Hong that Hong could not have his books back.

On February 10, 2006, Steve Anderson of Transworld Accreditation came to World Christian to inspect the school for accreditation. Moses Lee did not object, and was present for Anderson's site visit. Anderson took photos of the library.

6. *Hong Leaves World Christian*

Hong stopped working at World Christian on February 21, 2006. Moses Lee resigned and told Hong that a Mr. Yun would be acting president. Yun told Hong that he was fired. Hong asked for the return of his books. Yun, Moses Lee and Hong agreed that Hong could pick up his books a week later. When Hong tried to pick up his books, he was told he was on private property and should leave. Hong left, and wrote several letters demanding the return of his books, but World Christian did not respond. Later, he learned that World Christian was throwing away his books.

On March 10, 2006, Hong contacted police. On April 17, 2006, police went to World Christian with Hong. Hong took a U-Haul truck, but Hong did not get all of his books back. Hong retrieved approximately 70 boxes out of 450 boxes. The boxes had been piled up in the back yard as trash.

7. *The July 2006 Incident*

In late July 2006, while conducting a ceremony at World Christian's church, Hong came to the campus. Hong was outside on the church stairs when Young Lee came out, called Hong a "jerk" and grabbed Hong by the collar. Young Lee picked Hong up and Moses Lee came from behind and hit Hong in the mouth. Hong started bleeding from the mouth. Young Lee continued to swear at Hong.

Moses Lee denied striking Hong, who was not invited to the event. Some people tried to block Hong's entry because Young Lee did not want Hong to interfere with the service. Young Lee denied touching or hitting Hong.

Shortly after the July 2006 attack, Hong testified he saw Geun Sup Lee, DDS for treatment of his teeth. Dr. Lee pulled out four of Hong's bottom teeth. Hong denied that his teeth were loose before he saw Dr. Lee, and Dr. Lee did not tell him that his teeth needed to be extracted because of gum disease or an abscess. Trial exhibit 2, prepared by Dr. Lee, stated that Hong had been hit in the mouth by Moses Lee.³

³ The trial exhibits are not part of the record, although exhibit 2 is attached to defendants' motion for a new trial.

James Cho, DDS, was Hong's dentist and examined Hong in May 2006. At that time, Hong did not need to have any teeth extracted. In April 2007, Dr. Cho observed that Hong was missing several front teeth and his upper bridge was broken. Hong told Dr. Cho that he had been hit in the face. Dr. Cho believed the condition of Hong's teeth was consistent with being hit in the mouth. Dr. Cho did six dental implants to replace Hong's missing teeth at a cost of \$20,000. Hong still experiences pain and has trouble eating.

On the other hand, Dr. Geun Sup Lee testified that when he treated Hong, Hong's teeth already were falling out and were very loose. Dr. Lee's testimony was based on his review of Hong's X-rays. Dr. Lee knew Moses Lee. Dr. Lee acknowledged that he signed exhibit 2, but he did not read the contents; Dr. Lee denied that Hong told him he had been beaten by Moses Lee. Dr. Lee claimed that Hong came to him and asked him to prepare a diagnosis. Dr. Lee did not know how to do this, and thus Hong brought him a sample that he followed. In that regard, Hong gave Dr. Lee exhibit 53, a letter from Beacon Community and asked Dr. Lee to prepare a similar letter. Dr. Lee did so, only changing the names, ages and dates.

In rebuttal, Hong denied telling Dr. Lee what to say in his letter.

The jury found for Hong on the issues of fraud, conversion and battery, and awarded \$20,000 compensatory damages against Moses Lee and \$602,250 against World Christian. The jury awarded \$500,000 in punitive damages against Moses Lee and \$1 million against World Christian. After defendants moved for a new trial on the basis of excessive punitive damages, the trial court conditionally granted the motion unless Hong consented to a remittitur of the punitive damage awards to \$100,000 against Moses Lee and \$602,250 against World Christian. Hong consented to these reductions.

DISCUSSION

Plaintiffs argue that (1) the evidence at trial was insufficient to establish a battery; (2) the court erred in failing to grant a continuance to permit defendants to secure the

appearance of two witnesses; and (3) the punitive damage award exceeded the permissible amount. Respondents seek sanctions for a frivolous appeal.

I. Sufficient Evidence of Battery on Hong

Defendants allege that although there was evidence Moses Lee and Young Lee hit or slapped Hong, Hong failed to plead and prove vicarious liability on the part of World Christian for the conduct of Moses Lee and Young Lee. Defendants contend the only jury instructions addressing joint liability were the instructions for fraud. Hong asserts that defendants failed to provide an adequate record because they did not include the jury instructions, and in any event, the court instructed the court that on principals of vicarious liability when it instructed on punitive damages.

We note that defendants' arguments concerning sufficiency of the evidence, the lack of an instruction on vicarious liability, and the denial of a continuance are expressly limited to Hong's claim for battery. However, the special verdict did not apportion compensatory damages between Hong's claims for fraud, conversion, and battery. Rather, the special verdict states a total amount of damages awarded against each defendant on all claims. In particular, it awards \$20,000 against Moses Lee on all claims, and \$602,250 against World Christian on all claims. Further, both Moses Lee and World Christian were found liable on all three of Hong's claims, and the special verdict does not say what portion (if any) of the damages awarded against them was based on the battery claim. Moreover, the total compensatory damages award was within Hong's expert's estimate of the value of the book collection (\$300,000 to \$800,000). So even if we threw out the battery claim completely, we would still have to affirm the judgment on the basis of the fraud and conversion claims alone.

Any error on the battery claim was therefore harmless.

II. Punitive Damage Award

Defendants contend the trial court erred in failing to reduce the punitive damage awards against Moses Lee to a one-to-one ratio between compensatory and punitive damages as required by *State Farm Mut. Automobile Ins. Co. v. Campbell* (2003) 538

U.S. 408 [123 S.Ct. 1513, 155 L.Ed.2d 585] (*State Farm*) and *Roby v. McKesson Corp.* (2009) 47 Cal.4th 686. Further, they contend the trial court only addressed reprehensibility and disparity between actual harm and punitive damages, and thus failed to consider civil penalties authorized in comparable cases.

“Punitive damages may be imposed under state law to further a state’s legitimate interests in punishing unlawful conduct and deterring its repetition. [Citation.] States have considerable flexibility in determining the appropriate level of punitive damages to allow in different classes of cases and in any particular case. [Citation.] The amount of punitive damages offends due process under the Fourteenth Amendment as arbitrary only if the award is “grossly excessive” in relation to the state’s legitimate interests in punishment and deterrence. [Citations.]” (*Bullock v. Philip Morris USA, Inc.* (2011) 198 Cal.App.4th 543, 558.)

In determining the constitutional maximum for a particular punitive damage award under the due process clause, we are directed to follow three guideposts: “(1) the degree of reprehensibility of the defendant’s misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. [Citation.]” (*State Farm, supra*, 538 U.S. at p. 418, *citing BMW of North America, Inc. v. Gore* (1996) 517 U.S. 559, 575 [16 S.Ct. 1589, 134 L.Ed.2d 809] (*Gore*).)

The United States Supreme Court in *Gore* stated, “we have consistently rejected the notion that the constitutional line is marked by a simple mathematical formula,” and “[i]t is appropriate . . . to reiterate our rejection of a categorical approach.” (*Gore, supra*, 517 U.S. at p. 582.) Similarly, *State Farm* stated, “[w]e decline again to impose a bright-line ratio which a punitive damages award cannot exceed,” and “there are no rigid benchmarks that a punitive damages award may not surpass.” (*State Farm, supra*, 538 U.S. at p. 425.) *State Farm* reiterated, “Our jurisprudence and the principles it has now established demonstrate, however, that, in practice, few awards exceeding a single-digit

ratio between punitive and compensatory damages, to a significant degree, will satisfy due process. . . . Single-digit multipliers are more likely to comport with due process, while still achieving the State's goals of deterrence and retribution, than awards with ratios in the range of 500 to 1, [citation], or, in this case, of 145 to 1.” (*Ibid.*)

Here, the ultimate punitive damage award against Moses Lee was \$100,000, which was five times the compensatory damage award of \$20,000. Other than to point to the ratio, which was a single-digit ratio, defendants put forth no argument why the award was excessive given the punitive damage factors the trial court considered under *State Farm*. With respect to their argument the trial court failed to consider other punitive damage factors, namely, comparable cases, they discuss no comparable case and make no argument why this case differs from other cases, such that had the court considered this other factor, the result would have been different. “It is a fundamental rule of appellate review that the judgment appealed from is presumed correct and ““all intendments and presumptions are indulged in favor of its correctness.” [Citation.]’ [Citation.] An appellant must provide an argument and legal authority to support his contentions. This burden requires more than a mere assertion that the judgment is wrong. ‘Issues do not have a life of their own: If they are not raised or supported by argument or citation to authority, [they are] . . . waived.’ [Citation.] It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of correctness. When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived. [Citation.]” (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

III. Sanctions

Hong has moved for sanctions, arguing that defendants failed to provide an adequate record and their brief did not contain proper citation to the record or legal authority. We decline to impose sanctions.

Our Supreme Court in *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, set forth the applicable standard for a frivolous appeal. “[A]n appeal [is] frivolous only when it is

prosecuted for an improper motive—to harass the respondent or delay the effect of an adverse judgment—or when it indisputably has no merit—when any reasonable attorney would agree that the appeal is totally and completely without merit. [Citation.]” (*Id.* at p. 650.) The failure to include pertinent argument and citation to relevant authority constitutes a waiver of the issue on appeal. (Cal. Rules of Court, rule 8.204(a)(1)(B) [each point in a brief must be supported by “argument and, if possible, by citation of authority”]; *Berger v. California Ins. Guarantee Assn.* (2005) 128 Cal.App.4th 989, 1007.) Such a failure could constitute a ground for sanctions if it demonstrates the appeal was prosecuted for an improper ground. However, as *Flaherty* noted, “any definition [of a frivolous appeal] must be read so as to avoid a serious chilling effect on the assertion of litigants’ rights on appeal. Counsel and their clients have a right to present issues that are arguably correct, even if it is extremely unlikely that they will win on appeal. An appeal that is simply without merit is *not* by definition frivolous and should not incur sanctions. Counsel should not be deterred from filing such appeals out of a fear of reprisals. . . . [C]ourts cannot be ‘blind to the obvious: the borderline between a frivolous appeal and one which simply has no merit is vague indeed The difficulty of drawing the line simply points up an essential corollary to the power to dismiss frivolous appeals: that in all but the clearest cases it should not be used.’” (*Flaherty*, at p 650.) In this case, an appeal prosecuted on a less than perfect record that makes colorable arguments concerning the sufficiency of the evidence, omission of witnesses, and the proper award of punitive damages does not merit sanctions.

DISPOSITION

The judgment is affirmed. Respondent is to recover his costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.